

Surface Transportation Board, DOT

§ 1011.4

extent that the system of records pertains to the enforcement of criminal laws. Complaint and investigatory materials compiled by the Board's Office of Inspector General for law enforcement purposes also are exempt from the provisions of 5 U.S.C. 552a and the regulations of this part, pursuant to 5 U.S.C. 552a(k)(2).

[41 FR 3087, Jan. 21, 1976, as amended at 58 FR 15291, Mar. 22, 1993; 58 FR 28520, May 14, 1993]

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

Sec.

1011.1 General.

1011.2 The Board.

1011.3 Divisions of the Board.

1011.4 The Chairman, Vice Chairman, and Senior Board Member present.

1011.5 Delegations to individual Board Members.

1011.6 Employee boards.

1011.7 Delegations of authority by the Chairman.

1011.8 Delegations of authority by the Board to specific offices of the Board.

AUTHORITY: 5 U.S.C. 553; 31 U.S.C. §701, and 49 U.S.C. 701, 721, 11144, 14122, and 15721.

SOURCE: 58 FR 29357, May 20, 1993, unless otherwise noted.

§ 1011.1 General.

(a) This part describes the organization of the Board, and the assignment of jurisdiction and responsibilities to the Board, individual Board Members or employees, and employee boards.

(b) As used in this part, *matter* includes any case, proceeding, question, or other matter within the Board's jurisdiction; and *decision* includes any decision, ruling, order, or requirement of the Board, an individual Board Member or employee, or an employee board.

§ 1011.2 The Board.

(a) The Board reserves to itself for consideration and disposition:

(1) All rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) All investigations and other proceedings instituted by the Board, ex-

cept as may be ordered in individual situations.

(3) All administrative appeals in a matter previously considered by the Board.

(4) All other matters submitted for decision except those assigned to an individual Board Member or employee or an employee board.

(5) Except for matters assigned to the Chairman of the Board under § 1011.5(a)(6),

(i) The determination of whether to reconsider a decision being challenged in court;

(ii) The disposition of matters that have been the subject of an adverse decision by a court; and

(iii) The determination whether to file any memorandum or brief or otherwise participate on behalf of the Board in any court.

(6) The disposition of all matters involving issues of general transportation importance, and the determination whether issues of general transportation importance are involved in any matter.

(7) All appeals of initial decisions issued by the Director of the Office of Proceedings under authority delegated at § 1011.8(c). Appeals must be filed within 10 days after service of the Director decision or publication of the notice, and replies must be filed within 10 days after the due date for appeals or any extension thereof.

(b) The Board may bring before it any matter assigned to an individual Board Member or employee or employee board.

§ 1011.3 Divisions of the Board.

The Board may establish such divisions as it considers necessary to handle any matter before it.

§ 1011.4 The Chairman, Vice Chairman, and Senior Board Member present.

(a)(1) The Chairman of the Board is appointed by the President as provided by 49 U.S.C. 10301(b). The Chairman has authority, duties, and responsibilities assigned under 49 U.S.C. 10301(f) and described in this part.

(2) The Vice Chairman is elected by the Board for the term of 1 calendar year.

(3) In the Chairman's absence, the Vice Chairman is Acting Chairman, and has the authority and responsibilities of the Chairman. In the Vice Chairman's absence, the Chairman, if present, has the authority and responsibilities of the Vice Chairman. In the absence of both the Chairman and Vice Chairman, the senior Board Member present, based on time of continuous service as a member of the Board, is Acting Chairman, and has the authority and responsibilities of the Chairman and Vice Chairman.

(b)(1) The Chairman is the executive head of the Board and has general responsibility for:

(i) The overall management and functioning of the Board;

(ii) The formulation of plans and policies designed to assure the effective administration of the Interstate Commerce Act and related Acts;

(iii) Prompt identification and early resolution, at the appropriate level, of major substantive regulatory problems; and

(iv) The development and use of effective staff support to carry out the duties and functions of the Board.

(2) The Chairman of the Board exercises the executive and administrative functions of the Board, including:

(i) The appointment, supervision, and removal of Board employees, except those in the immediate offices of Board Members other than the Chairman;

(ii) The distribution of business among such personnel and among administrative units of the Board; and

(iii) The use and expenditure of funds.

(3) In carrying out his functions, the Chairman is governed by general policies of the Board and by such regulatory decisions, findings, and determinations as the Board by law is authorized to make.

(4) The appointment by the Chairman of the heads of offices and bureaus is subject to the approval of the Board. All heads of offices report to the Chairman.

(c)(1) The Chairman presides at all sessions of the Board and sees that every vote and official act of the Board required by law to be recorded is accurately and promptly recorded by the

Secretary or the person designated by the Board for that purpose.

(2) Regular sessions of the Board are provided for by Board regulations. The Chairman may call the Board into special session to consider any matter or business of the Board. The Chairman shall convene a special session to consider any matter or business on request of a member of the Board unless a majority of the Board votes either not to hold a special session or to delay conference consideration of that item, or unless the Chairman finds that special circumstances warrant a delay. Notwithstanding the two immediately preceding sentences of this paragraph, on the written request of any member of the Board, the Chairman shall schedule a Board conference to discuss and vote on significant Board proceedings involving major transportation issues, and such conference shall be held within a reasonable time following the close of the record in the involved proceeding.

(3) The Chairman exercises general control over the Board's argument calendar and conference agenda.

(4) The Chairman acts as correspondent and speaks for the Board in all matters where an official expression of the Board is required.

(5) The Chairman brings any delay or failure in the work to the attention of the supervising Board Member, employee, or board, and initiates ways of correcting or preventing avoidable delays in the performance of any work or the disposition of any matter.

(6) The Chairman may appoint such standing or *ad hoc* committees of the Board as he considers necessary.

(7) The Chairman of the Surface Transportation Board and the Secretary of the U.S. Department of Transportation shall take appropriate action to implement 49 U.S.C. 1483.

(8) The Chairman may reassign related proceedings to a board of employees and may remove a matter from an individual Board Member or employee or employee board for consideration and disposition by the Board.

(9) The Chairman may authorize any officer, employee, or administrative unit of the Board to perform a function vested in or delegated to the Chairman.

(10) The Chairman authorizes the institution of investigations on the Board's own motion, and their discontinuance at any time before hearing, except for investigations under 49 U.S.C. 10708.

(11) The Chairman approves for publication all publicly-issued documents by a bureau or office, except:

(i) Those authorized or adopted by the Board or an individual Board Member that involve decisions in formal proceedings;

(ii) Decisions or informal opinions of a bureau or office, or an initial decision of a hearing officer; and

(iii) Documents prepared for court cases or for introduction into evidence in a formal proceeding.

§ 1011.5 Delegations to individual Board Members.

(a) The following matters are referred to the Chairman of the Board:

(1) Entry of reparation orders responsive to findings authorizing the filing of statements of claimed damages as provided at 49 CFR part 1133.

(2) Extensions of time for compliance with orders and procedural matters in any formal case or pending matter, except appeals taken from the decision of a hearing officer on requests for discovery.

(3) Postponement of the effective date of orders in proceedings that are the subject of suits brought in a court to enjoin, suspend, or set aside the decision.

(4) Dismissal of complaints and applications on the unopposed motion of any party.

(5) Requests for access to waybills and to statistics reported under orders of the Board.

(6) Exercise of control over litigation arising under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), except for determinations whether to seek further judicial review of:

(i) A decision in which a court finds under 5 U.S.C. 552(a)(4)(F) that Board personnel may have acted arbitrarily or capriciously in improperly withholding records from disclosure; or

(ii) A decision in which a court finds under 5 U.S.C. 552a(g)(4) that Board

personnel acted intentionally or wilfully in violating the Privacy Act.

(7) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903 and the Board must find, under 49 U.S.C. 10904(b), that the public convenience and necessity require or permit the abandonment or discontinuance.

(8) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

(9) Designation in writing of employees authorized to inspect and copy records and to inspect and examine lands, buildings, and equipment pursuant to 49 U.S.C. 11144, 14122, and 15721.

(b) The following matters are referred to the Vice Chairman of the Board:

(1) Matters within the jurisdiction of the Accounting Board if certified to the Vice Chairman by the Board or if removed from the Board by the Vice Chairman.

(2) Matters involving the admission, disbarment, or discipline of practitioners before the Board under 49 CFR part 1103.

(3) In cases of calamitous visitation:

(i) Reduced rates authorization under 49 U.S.C. 10721;

(ii) Relief from the provisions of 49 U.S.C. 10730; and

(c) The Chairman, Vice Chairman, or any other Board Member to whom a matter is assigned under this part may certify such matter to the Board.

(d) The Chairman shall notify all Board Members that a petition for a stay has been referred to the Chairman for disposition under paragraphs (a) (2) or (3) of this section. The Chairman shall also inform all Board Members of the decision on that petition before service of such decision. At the request of a Board Member, made at any time before the Chairman's decision is served, the petition will be referred to the Board for decision.

58 FR 29357, May 20, 1993, as amended at 62 FR 48955, Sept. 18, 1997; 62 FR 50883, Sept. 29, 1997]

§ 1011.6 Employee boards.

This section covers matters assigned to the Accounting Board, a board of employees of the Board.

(a) The Accounting Board has authority:

(1) To permit departure from general rules prescribing uniform systems of accounts for carriers and other persons under the revised Interstate Commerce Act (IC Act), subtitle IV of title 49 of the U.S. Code, and from the regulations governing accounting and reporting forms;

(2) To prescribe rates of depreciation to be used by railroad and water carriers;

(3) To issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the IC Act; and

(4) To grant extensions of time for filing annual, periodic, and special reports in matters that do not involve taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(b) The board may certify any matter assigned to it to the Board.

[62 FR 50883, Sept. 29, 1997]

§ 1011.7 Delegations of authority by the Chairman.

(a)(1) This section provides for delegations of authority by the Chairman of the Surface Transportation Board to individual Board employees.

(2) The Chairman of the Board may remove for disposition any matter delegated under this section, and any matter delegated under this section may be referred by the Board employee to the Chairman for disposition.

(b)(1) The Board will decide appeals from decisions of employees acting under authority delegated under this section. Appeals must be filed within 10 days after the date of the employee's action, and replies must be filed within 10 days after the due date for appeals. Appeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

(2) [Reserved]

(c)(1) As used in this paragraph, *procedural matter* includes, but is not lim-

ited to, the assignment of the time and place of hearing; the assignment of proceedings to Administrative Law Judges; the issuance of decisions directing special hearing procedures; the establishment of dates for filing statements in cases assigned for handling under modified (non-oral hearing) procedure; the consolidation of proceedings for hearing or disposition; the postponement of hearings and of procedural dates; the waiver of formal specifications for pleadings; and extensions of time for filing pleadings. It does not include interlocutory appeals from the rulings of hearing officers; nor does it include postponement of the effective date of:

- (i) Decisions pending judicial review,
- (ii) Decisions of the entire Board,
- (iii) Cease and desist orders,
- (iv) Orders suspending or revoking operating authority, or
- (v) Final decisions where petitions for discretionary review have been filed under 49 CFR 1115.5.

(2) Unless otherwise ordered by the Board in individual proceedings, authority to dispose of procedural matters arising before issuance of an initial decision in proceedings assigned for handling under oral hearing procedure or assigned to an Administrative Law Judge under modified procedure is delegated to the Chief Administrative Law Judge of the Board. Notwithstanding this delegation, Board Members, Administrative Law Judges, and Joint Boards appointed under 49 U.S.C. 10341–10344 retain the authority to dispose of procedural matters in proceedings assigned to them.

(3) Unless otherwise ordered by the Board in individual proceedings, authority to dispose of routine procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an Administrative Law Judge, or arising after issuance of an initial decision by a hearing officer in a proceeding that has been the subject of an oral hearing, is delegated to the Secretary of the Board. The Secretary shall also have authority, unless otherwise ordered by the Chairman or by a majority of the Board in individual proceedings, to decide whether operating rights application and complaint proceedings shall

Surface Transportation Board, DOT

§ 1011.8

be handled under the modified procedure or be assigned to the Office of Hearings. In carrying out these duties, the Secretary shall consult, as necessary, with the General Counsel and the Director of any other Board Office to which an individual proceeding has been assigned.

(d) Except as provided at 49 CFR 1113.3(b)(1), authority to dismiss a complaint on complainant's request, or an application on applicant's request, is delegated to the Secretary and to the Chief Administrative Law Judge.

(e) [Reserved]

(f) Authority to grant or deny access to waybills and to statistics reported under orders of the Board is delegated to the Director of the Office of Economics.

(g) Certain accounts in the Uniform Systems of Accounts, 49 CFR parts 1200 through 1207, require Board approval to use. Authority to grant or deny requests for use of these accounts is delegated to the Director of the Office of Economics, the Deputy Director of Economics—Accounts, and the Chief of the Section of Audit and Accounting.

(h) The Secretary of the Board is delegated authority, under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, to:

(1) Sign and transmit to the Small Business Administration certifications of no significant economic effect for proposed rules, that if adopted by the Board, will not have a significant economic impact on a substantial number of small entities; and

(2) Sign and transmit findings regarding waiver or delay of an initial regulatory flexibility analysis or delay of a final regulatory flexibility analysis.

(i) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903, and the Board must find, under 49 U.S.C. 10904(b) that the public convenience and necessity require or permit the abandonment or discontinuance, is delegated to the Director of the Office of Proceedings.

(j) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has

been filed is delegated to the Director of the Office of Proceedings.

[58 FR 29357, May 20, 1993, as amended at 61 FR 52710, Oct. 8, 1996; 62 FR 50884, Sept. 29, 1997]

§ 1011.8 Delegations of authority by the Board to specific offices of the Board.

(a) *Office of Public Assistance.* (1) There is established an Office of Public Assistance. The Office assumes the functions previously assigned to the former Office of Special Counsel, the former Small Business Assistance Office, and the State/Community Affairs Liaison position formerly in the Office of Legislation and Governmental Affairs.

(2) The Office shall be managed by a Director, who also serves as Special Counsel of the Board, and by a Deputy Director, who also serves as the Small Business Assistance Officer of the Board. The Special Counsel shall be appointed by the Chairman, subject to the approval of a majority of the Board.

(3) The mission of the Office is to assist the Board and the public in determining and representing the public interest, with regard to the Interstate Commerce Act and related statutes. The primary function of the Office is to act as the focal point to coordinate Board activities ensuring that:

(i) The public interest is fully developed in proceedings before the Board and especially to contribute to the development of a complete record in proceedings in which important aspects of the public interest otherwise would not be explored adequately, particularly proceedings affecting the interests of bus passengers, household goods shippers, owner operators, and classes II and III rail carriers and the shippers they serve;

(ii) Small and minority-owned transportation entities, transportation-related entities, consumer groups, small communities, carriers and shippers, and State regulatory officials are advised on the applicability of the law and of the availability of assistance from the Board as this applies to their enterprise; and

(iii) The Board is advised on policy matters regarding its small business assistance functions and programs.

(4) The Office will participate as a party in Board proceedings, including rulemakings, only on the filing of a petition seeking, and on the approval of a majority of the Board granting, such recourse.

(5) The Office of Hearings, in noticing cases for public hearings, shall advise parties of the availability of assistance from the Office of Public Assistance.

(b) *Office of the Secretary.* The Secretary of the Board is delegated the following authority:

(1) Whether (in consultation with involved Offices) to waive filing fees set forth at 49 CFR 1002.2(f).

(2) To issue, on written request, informal opinions and interpretations (exclusive of informal opinions and interpretations on carrier tariff provisions), which are not binding on the Board. In issuing informal opinions or interpretations, the Secretary shall consult with the Director of the appropriate Board office. Such requests must be directed to the Office of the Secretary, Legal Branch, Surface Transportation Board, Washington, DC 20423. Authority to issue informal opinions and interpretations on carrier tariff provisions is delegated at 49 CFR 1011.8(d)(2) to the Office of Tariffs.

(c) *Office of Proceedings.* The Director of the Office of Proceedings shall have authority initially determinative of the following:

(1) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing).

(2) Whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10905(d) for the purpose of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations.

(3) Whether: (i) To impose, modify, or remove environmental and historic preservation conditions; and

(ii) In abandonment proceedings, to impose public use conditions under 49 U.S.C. 10906 and the implementing regulations at 49 CFR 1152.28.

(4) In abandonment proceedings, when a request for interim trail use/rail banking is filed under 49 CFR

1152.29, determining whether the National Trails System Act, 16 U.S.C. 1247(d), is applicable and, where appropriate, issuing Certificates of Interim Trail Use or Abandonment (in application proceedings) or Notices of Interim Trail Use or Abandonment (in exemption proceedings).

(5) In any abandonment proceeding where interim trail use/rail banking is an issue, to make such findings and issue decisions as may be necessary for the orderly administration of the National Trails System Act, 16 U.S.C. 1247(d).

(6) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

(7) In all exemption proceedings under 49 U.S.C. 11343(e) involving non-rail intermodal parties, to make such findings as necessary and to issue notices of exemption.

(8) To issue decisions, after 60 days' notice by any person discontinuing a subsidy established under 49 U.S.C. 10905 and at the railroad's request:

(i) In application proceedings, immediately issuing certificates of abandonment or discontinuance; and

(ii) In exemption proceedings, immediately vacating the decision that postponed the effective date of the exemption.

(9) In proceedings under the Feeder Railroad Development Program under 49 U.S.C. 10910 and the implementing regulations at 49 CFR part 1151:

(i) Whether to accept or reject primary applications under § 1151.2(b); competing applications under § 1151.2(c); and incomplete applications under § 1151.2(d);

(ii) Whether to grant waivers from specific provisions of 49 CFR part 1151.

(10) In exemption proceedings subject to environmental or historic preservation reporting requirements, to issue a decision, under 49 CFR 1105.10(g), making a finding of no significant impact where no environmental or historic preservation issues have been raised by any party or identified by the Board's Section of Energy and Environment.

(11) Whether to issue notices of exemption under 49 U.S.C. 10505:

(i) For acquisition, lease, and operation transactions under 49 U.S.C. 10901

Surface Transportation Board, DOT

§ 1012.1

and the implementing regulations at 49 CFR part 1150, subpart D; and

(ii) For rail transactions under 49 U.S.C. 11343 and the implementing regulations at 49 CFR 1180.2(d).

(12) Whether to issue rail modified certificates of public convenience and necessity under 49 CFR part 1150, subpart C.

(13) Whether to waive the regulations at 49 CFR part 1152, subpart C, on appropriate petition.

(14) To reject applications, petitions for exemption, and verified notices (filed in class exemption proceedings) for noncompliance with the environmental rules at 49 CFR part 1105.

(15) To reject applications by Burlington Northern Railroad Company to abandon rail lines in North Dakota exceeding the 350-mile cap of section 402 of Public Law 97-102, 95 Stat. 1465 (1981), as amended by The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, section 343 (Oct. 28, 1991).

(16) Whether to extend the 120-day limit within which 49 U.S.C. 10706(b)(3)(B)(vii) mandates that rate bureaus shall finally dispose of rules or rates docketed with them.

(17) Whether, absent controversy or unusual circumstances, to issue notices of provisional recertification under *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 684 (1989).

(d) *Office of Compliance and Enforcement.* The Office of Compliance and Enforcement is delegated the authority to:

(1) Reject tariffs and railroad transportation contract summaries filed with the Board that violate applicable statutes, rules, or regulations. Any rejection of a tariff or contract summary may be by letter signed by or for the Director, Office of Compliance and Enforcement, or the Chief, Section of Tariffs, Office of Compliance and Enforcement.

(2) Issue, on written request, informal opinions and interpretations on carrier tariff provisions, which are not binding on the Board.

(3) Grant or withhold special tariff authority granting relief from the provisions of 49 CFR part 1312. Any grant or withholding of such relief may be by letter signed by or for the Director, Of-

fice of Compliance and Enforcement, or the Chief, Section of Tariffs, Office of Compliance and Enforcement.

(4) Resolve any disputes that may arise concerning the applicability of motor common carrier rates under 49 U.S.C. 13710(a)(2).

[58 FR 29357, May 20, 1993, as amended at 62 FR 50884, Sept. 29, 1997]

PART 1012—MEETINGS OF THE BOARD

Sec.

1012.1 General provisions.

1012.2 Time and place of meetings.

1012.3 Public notice.

1012.4 Public participation.

1012.5 Transcripts; minutes.

1012.6 Petitions seeking to open or close a meeting.

1012.7 Meetings which may be closed to the public.

AUTHORITY: 5 U.S.C. 552b(g), 49 U.S.C. 701, 721.

SOURCE: 42 FR 13796, Mar. 11, 1977, unless otherwise noted.

§ 1012.1 General provisions.

(a) The regulations contained in this part are issued pursuant to the provisions of 5 U.S.C. 552b(g), added by section 3(a) of the Government in the Sunshine Act, Pub. L. 94-409 (Act), and section 17(3) of the Interstate Commerce Act. They establish procedures under which meetings of the Surface Transportation Board (Board), Divisions of the Board (Division), and standing committees of the Board are held. They apply to oral arguments as well as to deliberative conferences. They apply to meetings of the Board and of Divisions and committees of the Board where the Division or committee is empowered to act on the Board's behalf, but not where a Division or committee is meeting only to formulate an internal recommendation to the Board. They include provisions for giving advance public notice of meetings, for holding meetings which may lawfully be closed to the public, and for issuing minutes and transcripts of meetings.

(b) The words *meeting* and *conference* are used interchangeably in this part to mean the deliberations of at least a majority of the members of the Board, a Division, or a committee of the Board